

**Statement of  
Naomi C. Earp, Chair  
U.S. Equal Employment Opportunity Commission  
before the  
Subcommittee on the Constitution  
Committee on the Judiciary  
U.S. House of Representatives**

**September 13, 2006**

Mr. Chairman and members of the Committee:

Thank you for the opportunity to speak to you today. The Equal Employment Opportunity Commission (EEOC) has now had fifteen years of experience with enforcing and implementing Title I of the Americans with Disabilities Act (ADA), beginning with our publication of ADA regulations on July 26, 1991. Fifteen years seems like a long time, but it is not when compared with the length of time that Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 have been in existence. It is even a shorter period of time when compared to the years of discrimination that people with disabilities have endured.

Despite the fact that decades of discrimination cannot be undone in fifteen years, the public has the right to expect EEOC and other agencies that enforce the ADA to demonstrate progress. I think we see many examples of progress all around us - from curb ramps and accessible building entrances, to accessible transportation, to technological advancements that make more things possible for more people with disabilities than ever before. Many of these changes simply would not have occurred without the ADA.

## **Enforcement and Litigation**

We have certainly worked hard at the EEOC to make equal employment opportunities for people with disabilities a reality, and we have achieved a number of measurable results. Through the administrative process alone - that is, without our having gone to court - EEOC has obtained nearly \$575 million in compensation and other benefits on behalf of more than 39,000 individuals with disabilities between July 26, 1992 (when we began enforcing the law) and September 30, 2005. Because of the ADA, these individuals got jobs; were able to stay in jobs that they could still perform, even after having developed a disability; and/or received compensation for the discrimination they experienced. Of particular note are successful mediations of disability charges resulting in relief such as shift transfers, letters of recommendation, payment of insurance premiums, and the provision of severance packages.

In addition we have obtained more than \$37 million in monetary relief, as well as injunctive remedies, through our litigation program. We have successfully challenged policies that automatically excluded all individuals with conditions such as diabetes and epilepsy from jobs that many of them were capable of performing. We have challenged employers who impermissibly asked job applicants for information about their disabilities, rather than focusing on their ability to do the job, and we stopped one employer from conducting genetic tests on its employees who sustained on-the-job injuries.

In the last six years alone, we have won significant jury verdicts for many individuals with disabilities, including:

- an individual who was denied a customer service representative position because he was blind;
- a delivery company employee who was denied a sign language interpreter for staff meetings at which critical security information was communicated to employees (this was shortly after the terrorist attacks of September 11, 2001);
- a security company employee who was denied a reasonable accommodation of Mondays off while he underwent chemotherapy treatments for stomach cancer and was fired the day after his first treatment;
- a restaurant worker with mental retardation who was fired when a district manager for the company saw him one day and said he did not want to employ “people like that”; and
- a chemical manufacturing company employee with a mobility impairment who was fired because her employer believed that she would be incapable of evacuating safely in the event of an emergency.

## **Policy Development**

The development and issuance of policy guidance also plays an important role in the EEOC’s efforts to enforce the ADA and to promote voluntary compliance. In the 1990s, we issued numerous enforcement guidance documents on a variety of foundational ADA issues including: the definition of disability, the obligation to provide reasonable accommodations, and the extent of an employer’s right to conduct pre-employment medical exams and obtain medical information from applicants and employees. Further, we issued ground-breaking guidance on the ADA’s application to individuals with psychiatric disabilities, and

discrimination based on genetic testing. Our regulations and guidance have helped members of the public understand their rights and responsibilities under the law, and have been looked to by courts grappling with novel and complex legal issues.

Despite our efforts to enforce and implement the ADA, employment of people with disabilities has presented the greatest ADA challenge, with seemingly little movement in the low employment rate of people with severe disabilities.

The reasons given for why the ADA seems to have met with mixed success in decreasing employment barriers for people with disabilities are varied. Some point to a lack of educational opportunities that prepare people with disabilities for work or a lack of accessible transportation. In other words, enforcement of the ADA's employment provisions alone is simply not enough to achieve a level playing field for people with disabilities.

### **New Freedom Initiative**

President Bush's New Freedom Initiative is a comprehensive approach to addressing the many complex factors that keep people with disabilities from participating fully in America's social and economic mainstream. Of course, at the EEOC our focus in this bold initiative is on access to employment. The New Freedom Initiative calls for increased technical assistance to small businesses on the requirements of the ADA and the tax incentives available to businesses that hire and retain qualified workers with disabilities. We have responded by conducting nearly 100 workshops for businesses with between fifteen and one hundred employees - businesses large enough to be covered by the ADA, but too small to have their own human resources departments to help them navigate some of the law's complexities. These workshops are free, last from two to three hours (because the small business owner's time is precious), and are usually organized in

conjunction with local employer organizations so that they are responsive to community needs. The workshops complement the EEOC's Technical Assistance and Training Program, which has targeted representatives of advocacy groups concerned with the rights of people with disabilities, reaching over 40,000 participants.

We have also published user-friendly technical assistance documents for employers and individuals with disabilities. In August of 2002, we published *The Americans with Disabilities Act: A Primer for Small Business*, which explains the ADA's requirements in a sensible, straightforward way. We followed up the Primer with six question-and-answer documents on the ADA's application to specific disabilities that affect large portions of the population, such as diabetes and cancer. Other publications have included a document that explains how telework can be a reasonable accommodation for people with disabilities; fact sheets on the ADA for food service employers and for employers in the legal profession; and a question-and-answer document for job applicants with disabilities.

In October of 2005, we issued guidance explaining how the ADA protects those who have an "association" with someone with a disability. I believe this provision of the ADA will become increasingly important as individuals with disabilities who have been living in institutional settings move into the larger community -- alongside family members and friends. As you know, the association provision prohibits employers from making adverse employment decisions based upon an individual's known relationship or association with a person with a disability.

We heard from members of the disability community about concerns they had in the aftermath of the Supreme Court's decision in *University of Alabama v. Garrett* that some state employers might believe that they no longer had to comply with the ADA. Of

course, nothing could be further from the truth. *Garrett*, in fact, said that states must comply with the ADA and only held that the 11<sup>th</sup> Amendment barred individuals from suing states for monetary damages. In response to the disability community's concerns, however, we launched a study to find out what nine states were doing to hire and retain qualified individuals with disabilities. In October of 2005, we issued our Final Report on Best Practices for the Employment of People with Disabilities in State Government, which highlights the innovative practices of nine states - Florida, Kansas, Maryland, Missouri, New Hampshire, New Mexico, Utah, Vermont, and Washington. We have also established on-going relationships with some of the states in our study, providing them technical assistance to enhance compliance with the ADA.

As you can see, we have achieved a great deal under the New Freedom Initiative through partnerships - partnerships with the business community, organizations of and for people with disabilities, and state governments. But the New Freedom Initiative also calls upon Federal agencies to work in partnership with one another. I am proud of the contributions that the EEOC has made to the Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities, and the Interagency Committee on Disability Research.

We have worked with two sister agencies - the Department of Justice and the National Council on Disability - to produce two documents that explain how to make the process of mediating EEO complaints accessible to people with disabilities. Additionally, a productive relationship between the EEOC and the Department of Transportation ultimately led to DOT's revision of regulations that had previously banned all people with insulin-dependent diabetes from driving commercial motor vehicles. Also, another government partnership is EEOC's involvement on the DOL-led inter-agency task force examining how to best transition disabled youth from structured school settings to employment. One of my

Special Assistants sits on the task force, as does a member of Commissioner Griffin's staff. The task force is led by DOL's Office of Disability Employment Policy (ODEP). I look forward to enhancing existing relationships with Federal agencies and to forming new partnerships in the coming years as issues arise.

## **Conclusion**

The EEOC is primarily an enforcement agency. But we must never underestimate what can be accomplished through creative partnerships of the kind that the New Freedom Initiative promotes. I am committed to working with Congress and with all of those stakeholders represented here today to ensure that progress in equal employment opportunity for all people with disabilities continues.

Mr. Chairman, thank you once again for the opportunity to testify today.